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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

MARK TWAIN ST. JOSEPH'S
HEALTHCARE CORPORATION,

Plaintiff - Appellant,

v.

MIKE LEAVITT,** Secretary of the
Department of Health and Human
Services,

Defendant - Appellee.

No. 04-15092

D.C. No. CV-F-02-6481-AWI-
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MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of California
Anthony W. Ishii, District Judge, Presiding

Argued and Submitted October 19, 2005
San Francisco, California

Before: D.W. NELSON, RAWLINSON, and BEA, Circuit Judges.

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

** Mike Leavitt is substituted for his predecessor, Tommy G. Thompson, as Secretary of the Department of Health and Human Services pursuant to FED. R. APP. P. 43(c)(2).

1. The finding of the Provider Reimbursement Review Board (PRRB) that the overpayment of Medicare reimbursements to Mark Twain St. Joseph's was due to an administrative error, rather than a recalculation of the hospital specific rate (HSR), was supported by substantial evidence, and its decision was not arbitrary, capricious, or contrary to law. *See Community Hosp. of the Monterey Peninsula v. Thompson*, 323 F.3d 782, 789 (9th Cir. 2003).
2. The Notice of Reopening issued by the Intermediary in October 1998, as to fiscal years 1994 and 1995, was a timely reopening to correct an administrative error under 42 C.F.R. § 405.1885. *See Foothill Presbyterian Hosp. v. Shalala*, 152 F.3d 1132, 1135 (9th Cir. 1998) (noting that reopening of a cost report is governed by 42 C.F.R. § 405.1885.).
3. Because the Notice of Reopening did not modify the originally calculated HSR, the finality provisions of 42 C.F.R. §§ 412.71-72 were not implicated.

AFFIRMED.